NEIL ABERCROMBIE
GOVERNOR

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TESTIMONY ON HOUSE BILL 1088
RELATING TO CORRECTIONS

by
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Committee on Public Safety & Military Affairs
Representative Henry J.C. Aquino, Chair
Representative Ty Cullen, Vice Chair

Thursday, February 3, 2011, 8:30 AM
State Capitol, Conference Room 309

Chair Aquino, Vice Chair Cullen, and Members of the Committee:

I am testifying in support of H.B. No. 1088, which revises Chapter 353 of the Hawaii Revised Statutes in order to permit the Department of Public Safety to seek court orders for the involuntary administration of mental health medications.

Adopting the revisions in this statute would permit the Department of Public Safety the ability to request the courts to hear cases pertaining to the clinical need to administer mental health medications on an involuntary basis to refusing inmates that present a danger to themselves and others due to mental illnesses.

The mental health services within the Department of Public Safety are in the process of undergoing radical change and improvement, beginning at the Oahu Community Correctional Center (OCCC), but eventually throughout all facilities administered by the Department. These changes and improvements have been initiated in response

to a Settlement Agreement between the Federal Department of Justice (DOJ) and the State of Hawaii. The goal of the Settlement Agreement and both parties is to bring correctional mental health care and treatment in the Departments facilities to a level that comports with national standards of practice.

As a result of this initiative, the administration and the mental health services branch have made significant progress towards compliance at OCCC. In fact, in spite of beginning our compliance efforts over a year late, we have made dramatic gains over the last two years, have made up six months of that original lag and are on target (barring any unforeseen setbacks) to achieve full compliance at OCCC by the end of December, 2011.

The Settlement Agreement not only required the expansion of mental health staffing at OCCC, but also require major changes in the ways we administered and delivered treatment to inmates with mental health disorders in our facilities. Many new policies and procedures governing the treatment of the mentally ill had to be either rewritten or developed from scratch. I am happy to report that the Department of Justice, as well as the Independent Court Monitor (IM), have reviewed and approved all of our new policies and procedures. Most of these are now fully operational at OCCC, and we have imbedded a process for quality monitoring, continuous quality improvement and the regular reporting on our compliance to the DOJ and the IM. As I have indicated, we are well on our way toward compliance in implementing ***most*** of our policies and procedures, ***but not all.*** One of the most **significant gaps** in treatment remains **our inability to comport with national standards regarding securing the ability to pursue the involuntary medication of inmates who remain a danger to themselves and others due to their mental illnesses**. Without the ability to secure treatment for these individuals, we will remain deficient in a treatment requirement that is critical in brining the state into compliance with the Settlement Agreement, and extracting the state from Federal oversight.

I have already written the internal policies and procedures that will guide the implementation of this statute revision, if approved. The Department of Justice and the Independent Monitor have read and approved the policies and procedures related to the administration of court authorized involuntary medications. However, the Department of Public Safety has been advised by legal council that we must enact a change in the statutes to permit and authorize our practice, as well as operationalize these policies and procedures.

From a clinical perspective, it has been empirically demonstrated that individuals who remain untreated for their mental illnesses experience greater brain damage as the result of cycling in and out of psychosis. Individuals treated for their mental illness have a better prognosis, and are able to more meaningfully participate in other forms of treatment targeted at rehabilitation, recovery and community reentry.

The present system of care in our correctional facilities allows individuals to refuse necessary mediations, continuing the downward spiral of their disorders. When these individuals decompensate to the point of presenting a danger to themselves and others, they are frequently secluded and/or restrained, and administered short-term emergency medications; only to cycle through the same presentation over and over again. When cases become extreme, these individuals can be transferred to Hawaii State Hospital. The transfers to the state hospital almost always results the hospital securing an order for involuntary medications. Subsequently, these individuals are stabilized on medications and returned to the correctional system only to begin the cycle of refusal, decompensation, dangerousness, seclusion, restraint, emergency medications and rehospitalization all over again. This is inhumane, unnecessary, inefficient and terribly costly from a medical perspective for the individual, as well as from an administrative perspective for the state.

I also would like to take the opportunity to enlighten you regarding another group of mentally ill inmates for whom this proposed statute change would be effective, as well

as have significant treatment and cost impact for the state. There are individuals who are admitted to our facilities for the purpose of determining fitness – competence to stand trial and criminal responsibility. Those who are truly mentally ill generally require treatment with medications to "restore fitness", thus permitting them to be "able to understand the nature of the charges against them", as well as to "assist in their own defense". It is not uncommon for these individuals to be among the refusers that I have mentioned earlier in this testimony. Left untreated, they are almost always determined "unfit to proceed", and subsequently sent to the State Hospital. The State Hospital restores them to fitness fundamentally through securing an order for and administering involuntary medications. Once "restored", they are returned to the correctional facility, only to decompensate again, be found unfit again and then sent back to the state hospital. These cases present even greater systemic problems and cost implications; as these individuals are not only bouncing between correctional facilities and the state hospital, but also in and out of our courts, being restored and becoming unfit, and continuously being examined and reexamined for fitness.

The system as presently designed is no way aiding in treatment, nor is it good public policy and practice.

Thank you for your thoughtful consideration. I remain available to discuss and dialogue about this proposed changed in HRS353, or for any other matters you have concerning mental health care and treatment.